(21)

Supreme Court of the United States

OCTOBER TERM 1941

No. 1044

FARM BUREAU MUTUAL AUTOMOBILE INSURANCE COMPANY,
PETITIONER

VS.

ROSE VIOLANO, Administratrix and J. ALAN PARTRIDGE,
PETITIONEES

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Farm Bureau Mutual Automobile Insurance Company, a corporation under the laws of the State of Ohio with its principal office at Columbus in the State of Ohio, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above entitled case on December 20, 1941, affirming the judgment of the United States

District Court for the District of Vermont. The official opinion, review of which is sought, is printed as pages 203 to 212 of the official opinions for the October 1941 term, and at 123 F. (2d) 692.

STATEMENT

This was an action by Petitionee Violano as plaintiff below against Petitioner Farm Bureau Mutual Automobile Insurance Company (hereinafter called "Farm Bureau") and Petitionee J. Alan Partridge and one J. Arthur Partridge, as defendants below, on a policy of automobile liability insurance issued to J. Arthur Partridge. Plaintiff below had obtained an unsatisfied judgment against Petitionee J. Alan Partridge for negligence in driving a car belonging to J. Arthur Partridge described in a policy of insurance issued to J. Arthur by Farm Bureau. There was no judgment or claim against J. Arthur. But plaintiff below asserted that J. Alan Partridge was covered by a provision in the policy which extended the insurance to unnamed persons included in a described class. Petitioner, as a Defendant below, claimed that J. Alan Partridge was excluded from the described class because of an exception excluding from coverage persons "covered by valid and collectible insurance against a claim also covered by this policy". The issue in the case below was whether J. Alan Partridge was covered by valid and collectible insurance issued by the Shelby Mutual Plate Glass and Casualty Company of Shelby, Ohio (hereinafter called "Shelby"), under the following circumstances found by the District Court, viz.: Prior to the accident with which this case is concerned, Petitionee Partridge, while driving J. Arthur's car, occasioned, by his fault, damage to property exceeding $75.00. "For this offense the Commissioner of Motor Vehicles, in obedience to the statutes of Vermont (P.L. Secs. 5190-5199) required 'proof of financial responsibility' by J. Alan as an operator of motor vehicles or his license to operate would have been suspended, and by J. Arthur as owner of all his motor vehicles or his registrations of

them would have been suspended. After this J. Arthur purchased insurance for his minor son, J. Alan, as an operator of motor vehicles in the Shelby Company (D Ex J), and for himself as owner of the Ford truck in that Company, and as owner of the Ford coach in the Farm Company. (P Ex 4)—the policies were issued and delivered in Vermont." (Decision of Facts, R. 235)

Shelby's coverage of Alan as an operator was by an endorsement (Auto 1 S) with him named as assured attached to its policy (Pl. Ex. 3, opp. R. 250; R. 122, 236) covering the liability of Arthur on a car owned by him. This endorsement is dated July 16, 1934. On July 17, 1934, another endorsement to the same policy (Auto 5 S) conformed the policy to the requirements of the Vermont Financial Responsibility Law. On July 24, Shelby issued a certificate on the Vermont official form stated to be in compliance with the statute and certified that petitionee Alan Partridge "has been issued policy of insurance in the Shelby Mutual Plate Glass and Casualty Company covering the legal liability of the Named Assured for accidents which occur while any motor vehicle other than a motor vehicle owned in full or in part by the Named Assured is being driven personally by the Named Assured within the boundaries of the State of Vermont. Policy No. 26418, effective from May 1, 1934 to May 1, 1935 limits:—P.L. Complies with law. P.D. Complies with law. Dated at Barre, Vermont, this 24th day of July, 1934." (Def. Ex. J, opp. R. 251; R. 228.)

On August 9, 1934 J. Arthur applied to Farm Bureau for a proof of Financial Responsibility and policy rider with respect to its policy covering the car causing the damage involved in the instant case. The Court found:

> "When J. Arthur applied and paid for this 'financial responsibility certificate' as owner of the Ford coach in the Farm Company, extending that insurance as required by the Commissioner, he told Carr, the agent for the Farm in that transaction, that the Shelby had already insured J. Alan as an operator." (R. 236)

The District Court held that the Shelby insurance, because of a provision of the endorsement Auto 1 S was excess insurance. The Circuit Court of Appeals did not put its decision upon this basis, but (a) held that Auto 1 S by its language limited the coverage of liability of Alan as Named Assured by excluding liability in connection with any vehicle owned by Arthur in whose household Alan lived—thus contradicting the terms of the certificate of coverage filed with the Commissioner. (b) The Appellate Court indicated a belief that the endorsement which provided that "any coverage provided by this policy of liability for bodily injury or death or liability for property damage is hereby amended to conform with provision of the Vermont Financial Responsibility Law", did not make the coverage of the policy conform to the coverage certified by the Shelby Company to the Commissioner of Motor Vehicles and that the conformity extended only to minor qualifications and conditions certified to be covered. (c) The Appellate Court held that the Vermont Financial Responsibility Law did not require coverage of Alan while driving Arthur's cars if in fact these risks were covered by another insurer. This decision entirely ignored the fact that the Vermont statute required not only coverage or assurance of satisfaction of all liability, but *"proof"* of coverage or responsibility.

Section 5190 of the Public Laws of Vermont provided that in the circumstances then existing:

> "The Commissioner shall require *proof** of financial responsibility to satisfy any claim for damages by reason of personal injury to or death of any person . . ."

And

> "Sec. 5193. METHOD OF PROOF. Such proof of financial responsibility shall be furnished as shall be satisfactory to the commissioner and may be evidence of the insuring of such person against public liability and property damage in an insurance company authorized to do business in this

* Italics supplied.

state, in the amounts specified in the third preceding section . . . (with restriction on cancellation) or such proof may be the bond of a surety company . . ."

ASSERTED BASIS OF JURISDICTION TO REVIEW

Petitioner contends that the Supreme Court of the United States has jurisdiction to review the judgment of the Circuit Court of Appeals because that court has decided in the instant case an important question of local law in a way probably in conflict with applicable local decisions in respects hereinafter stated.

QUESTIONS PRESENTED

When Shelby subsequent to insurance of Alan Partridge filed its certificate of insurance of Alan Partridge in compliance with the Vermont Financial Responsibility Law, was the extent of its coverage of the assured defined by that certificate and the Vermont Financial Responsibility Law or limited by its prior agreement?

Is the coverage evidenced by Shelby's certificate under the Vermont Financial Responsibility Law reduced because of the existence of other possible and contingent coverage not included in any proof filed under the law?

As to both questions the rule of decision is to be found in the law of Vermont.

REASONS RELIED ON

Petitioner contends that the liability is defined by the statute and not by prior agreements between the parties; and that the liability so defined may not be cut down by the possibility of other insurance contingently covering the assured.

The Circuit Court of Appeals held that the obligation of Shelby with respect to Alan Partridge was to be governed by written agreements made July 16 and 17, 1934, rather than by the certificate of

Financial Responsibility issued by Shelby July 24, 1934, in compliance with Vermont law, for the purpose of preventing the suspension of the motor vehicle operator's license held by Alan Partridge. In so doing the Circuit Court of Appeals subordinated the statute to the terms of a private agreement for insurance. The contract was made in Vermont and governed by its laws. Under those laws statutory requirements control the written contract and the expressed intention of the parties with respect to insurance.

Zabarsky vs. *Employers Fire Ins. Co.*, 97 Vt. 377, 381; 123 Atl. 520, 522 (1924).
Spaulding's Adm'r. vs. *Mutual Life Ins. Co.*, 96 Vt. 67, 80; 117 Atl. 376, 381 (1922).

The decision of the Circuit Court of Appeals, therefore, thus altered the true legal status of Alan Partridge's insurance so as to wrongfully bring him within the terms of Farm Bureau Policy in violation of the laws of applicable Vermont decisions.

In order to arrive at its decision above stated, the Circuit Court of Appeals in effect held that under the Vermont Financial Responsibility Law, the existence of contingent insurance coverage other than that certified, was efficient to alter the contract which would otherwise exist and by this alteration to exonerate the primary and certifying insurer and obligate the secondary contingent insurer. This decision is in conflict with the determined law of Vermont and resulted in imposing upon the petitioner the obligations of an insurer which it had not assumed and which were not imposed upon it by any law. In support of these claims petitioner files an accompanying brief.

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